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Internal Revenue Service
Cincinnati, Ohio
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Date 11/12/92

Signature [REDACTED]

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Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated [REDACTED] under the laws of the state of [REDACTED]. Your stated purpose is to establish educational programs for the young within the meaning of section 501(c)(3) of the Code, and specifically to teach high school age students to sell.

[REDACTED] (hereinafter "Associates"), a for-profit corporation, is a candy wholesaler. Associates distributes boxes of candy to crew supervisors, who in turn supervise high-school age youths who sell the candy door-to-door. Associates is owned by [REDACTED], who is also your president and one of your two directors. The other director is [REDACTED], who is Associates' sales coordinator and area supervisor.

The contract between Associates and the crew supervisors provides for a payment to you of [REDACTED] cents per box of candy sold. You intend to use these funds to pay for recreational and educational activities for the young people who sell the candy. These educational activities consist of instruction in selling techniques. Recreational activities consist of fishing, camping, trips to amusement parks, skating outings, and other similar activities. These recreational activities are available only to youths who sell candy for Associates. Flyers used to recruit salespersons promise free trips, contests, prizes, and bonuses.

Section 501(c)(3) of the Internal Revenue Code describes, in relevant part, corporations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes

specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In International Postgraduate Medical Foundation v. Comm., TCM 1989-36, the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a non-profit corporation that conducted continuing medical educational tours. Michael Helin, trustee and executive director of the non-profit corporation, was also a shareholder and president of H & C Tours, a travel agency. The Foundation used H & C Tours exclusively for all travel arrangements. The Foundation did not solicit competitive bids from any entity other than H & C Tours. In holding the Foundation not to be exempt, the Court stated:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

The recreational activities you provide are part of the compensation promised to Associates' salespersons. Participation in these programs is available only to sales personnel. Thus, they serve the commercial interests of Associates more than incidentally and are not in furtherance of an exempt purpose. You have failed to distinguish between your educational activities and the training activities of crew supervisors in the ordinary course of their business activities. Your educational activities are therefore not in furtherance of an exempt purpose. Because you provide training and compensation for its salespersons, Associates benefits substantially from the manner in which your activities are carried on. Therefore, like the organization in International Postgraduate Medical Foundation v.

Comm., you do not qualify for exemption under section 501(c)(3) of the Code.

Furthermore, even if you qualified for exemption, you would be classified as a private foundation because all of your income consists of commissions on the sale of candy. Such income is not public support within the meaning of either section 509(a)(1) or 509(a)(2) of the Code.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 and you are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

[REDACTED]

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service
[REDACTED]
1111 Constitution Avenue, NW
Washington, DC 20224

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Rulings Branch 2

cc: DD, Cincinnati
Attn: EO Group

cc: [REDACTED]